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(IC 3708)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

OMAR HERNANDEZ

Plaintiff,

COMPLAINT AND
DEMAND FOR
JURY TRIAL

-v-

14 CV

CITY OF NEW YORK, OFF. MICHAEL DETERLIZZI
(Shield No. 01389), OFF. JOHN AND JANE DOES,
POLICE OFFICERS FOR THE CITY OF NEW YORK,
INDIVIDUALLY AND AS POLICE OFFICERS FOR
THE CITY OF NEW YORK,

Defendants

----- X

INTRODUCTION

1. This is an action for damages for the wrongful acts of defendants NEW YORK CITY and OFF. MICHAEL DETERLIZZI, OFF. JOHN and JANE DOES of the New York City Police Department, all acting under color of state law and pursuant to their authority, in violation of plaintiff's rights under the Constitution and laws of the United States and the State of New York.

2. Plaintiff Omar Hernandez alleges that beginning on or about November 13, 2012, defendants committed wrongful and illegal acts against Plaintiff by assaulting him, using excessive force in arresting him, and violating his Federal and New York State civil rights.

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JURISDICTION

3. This action is brought under 42 U.S.C. Section 1983 in conjunction with the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and the constitutional, statutory and common laws of New York State.

4. Jurisdiction is invoked herein pursuant to the aforementioned statutory and constitutional provisions and pursuant to 28 U.S.C. Section 1331 and 1343, this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

5. Plaintiff further invokes this Court's pendant jurisdiction over any and all state law claims and causes of action which derive from the same nucleus of operative facts that give rise to the federally based claims and causes of action, pursuant to Title 28, U.S.C. Section 1367.

6. Venue is laid within the United States District Court for the Southern District of New York in that the actions complained of occurred in the Southern District of New York.

TRIAL BY JURY

7. Plaintiff demands a trial by jury on each and every one of his claims as pled herein.

PARTIES

8. At all times relevant hereto, plaintiff OMAR HERNANDEZ was a resident of the Bronx, New York.

9. At all times relevant hereto, defendant NEW YORK CITY was and is a municipality of the State of New York and owns, operates, manages, directs and

controls the New York City Police Department, which employs the other named defendants.

10. Defendant MICHAEL DETERLIZZI is and was at all times relevant to this action a police officer, employed by the New York City Police Department, and acting under color of state law. He is being sued in both his individual and official capacities.

11. Defendants JOHN and JANE DOES are and were at all times relevant to this action police officers, employed by the New York City Police Department, and acting under color of state law. They are being sued in both their individual and official capacities.

12. At all times relevant hereto and in all their actions described herein, defendants MICHAEL DETERLIZZI, JOHN and JANE DOES were acting under color of the statutes, ordinances, regulations, policies, customs and usages of the New York City Police Department and New York City, pursuant to their authority as employees, servants and agents of the New York City Police Department, within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents and police officers.

13. The conduct and injuries complained of herein ensued without any negligent or culpable conduct on the part of the plaintiff.

NOTICE OF CLAIM

14. On February 13, 2013, plaintiff Hernandez's Notice of Claim was filed with the Comptroller's Office of the City of New York. More than thirty days have elapsed since the filing of the Notice of Claim and this matter has not been settled nor otherwise disposed of.

15. On September 11, 2013, a hearing pursuant to New York State General Municipal Law §50-h was held at which time plaintiff Omar Hernandez was questioned by a representative of defendant New York City.

16. The transcript of this hearing is attached hereto as Exhibit A and as factual support for the causes of action alleged herein and is made a part of this Complaint.

FACTUAL BACKGROUND

17. On November 13, 2012, Plaintiff Omar Hernandez was driving a 1996 white Nissan automobile in the Bronx about 2:00 a.m.

18. His girlfriend, Astrid Ruiz, was a passenger in the vehicle.

19. They were coming from a friend's house on East Tremont Avenue.

20. They were on their way home.

21. Plaintiff made a U-turn.

22. The back wheels spun out because he stepped on the gas a little too hard.

23. Plaintiff saw a police car behind him but was not aware that it was intending to pull him over.

24. When Plaintiff saw the patrol car's lights come on, he realized that he was being pulled over.

25. Instead of stopping, Plaintiff kept driving in an attempt to avoid being stopped and getting a ticket.

26. While fleeing, Plaintiff crossed a double yellow line and traveled for one block in the wrong direction.

27. He applied the brakes to make a turn and the car crashed into a concrete barrier.

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28. Neither Plaintiff nor Ms. Ruiz was injured in the crash.
29. They both had been wearing their seatbelts.
30. Plaintiff saw a police officer, got down on his hands and knees, put his hands behind his head and waited.
31. Plaintiff did this because he did not want the officer to think he had a weapon or that the officer would encounter any physical resistance.
32. Plaintiff wanted to make sure that the officers knew he was complying.
33. The two male officers approached the Plaintiff.
34. One officer was white (Defendant Deterlizzi), the other was black (name unknown).
35. Off. Deterlizzi grabbed Plaintiff's hands behind his head while he slammed Mr. Hernandez to the ground, apparently using his knee to Plaintiff's back causing Plaintiff's face to hit the ground as his hands were not free to break his fall.
36. While Plaintiff's hands were behind his back, the other officer got on top of Mr. Hernandez and punched him about seven to ten times on Plaintiff's ribs while cursing at Mr. Hernandez.
37. After being cuffed, the other officer kicked Plaintiff in the face, pushed his face into the ground and called Plaintiff a "stupid motherfucker."
38. The same black officer then yanked Mr. Hernandez's college ID off his neck.
39. Plaintiff was put in the police car and taken to the precinct by two other officers.
40. Plaintiff had gashes on his face and was bleeding from his eyebrows.

41. He also suffered a chipped tooth.

42. Photos of the injuries were taken after the event and Mr. Hernandez's release from court.

43. Plaintiff was transported to Central Booking where medical personnel gave first aid including applying bandages on his forehead.

44. Plaintiff was charged with reckless endangerment, reckless driving and unlawful flight.

45. After spending the night in custody, Mr. Hernandez was released and given a return date in court.

46. Upon his release, he went to the emergency room at Albert Einstein Medical Center.

47. To the medical staff there, Mr. Hernandez described the pain in his side, ribs and forehead and pointed out the cuts, gashes and lump on his forehead.

48. X-rays of his side and a CT scan of his head were taken.

49. The CT scan revealed severe mucosal thickening.

50. The pain caused limitations on Mr. Hernandez's mobility that continued for about two months.

51. He has residual scarring and a chipped tooth.

52. The charges were eventually resolved on February 6, 2013 with a guilty plea to reckless driving and a \$200.00 fine.

**COUNT ONE: VIOLATION OF CONSTITUTIONAL RIGHTS
(POLICE OFFICERS)**

53. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-52 of this complaint, as though fully set forth herein.

54. The acts, omissions and conduct of the defendants, all members of the New York City Police Department, and all acting under color of state law, deprived plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States; in particular the rights to be free from excessive force and cruel and unusual punishment and to due process.

55. By these acts, omissions and conduct, these individual defendants have deprived plaintiffs of rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983, for which the defendants are individually liable.

**COUNT TWO: VIOLATION OF CONSTITUTIONAL RIGHTS
(Defendant New York City)**

56. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-55 of this complaint, as though fully set forth herein.

57. The acts, omissions and conduct of defendant New York City, as set forth above, deprived plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States; in particular the rights to be free from excessive force and cruel and unusual punishment and to due process.

58. By these acts, omissions and conduct, defendant New York City has deprived plaintiff of rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983.

COUNT THREE: CONSPIRACY TO VIOLATE CIVIL RIGHTS

59. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-58 of this complaint as though fully set forth herein.

60. The defendants conspired to violate the plaintiff's civil rights by agreeing between themselves to use excessive force in violation of 42 U.S.C. 1983, for which defendants are individually liable.

COUNT FOUR: ASSAULT

61. Plaintiff repeats and re-alleges the allegations in paragraphs 1-60 of this complaint, as though fully set forth herein.

62. The acts and conduct of defendants, as alleged above, constitute assault under the laws of the State of New York. This Court has pendant jurisdiction to hear and adjudicate such claims.

**COUNT FIVE: RESPONDEAT SUPERIOR LIABILITY
(Defendant New York City)**

63. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-62 of this complaint, as though fully set forth herein.

64. At all times pertinent hereto, defendants were acting within the scope of their employment as officers of the New York City Police Department.

65. Defendant New York City is thus liable under the doctrine of respondeat superior, for the intentional torts of defendants, committed within the scope of their employment.

COUNT SIX: NEGLIGENCE

66. Plaintiff repeats and re-alleges the allegations contained in paragraph 1-65 of this complaint, as though fully set forth herein.

67. The defendant police officers, while acting as agents and employees for New York City, owed a duty to plaintiffs to perform their duties without violating

plaintiff's constitutional rights. Defendants' conduct constitutes negligence for which these defendants are individually liable.

**COUNT SEVEN: NEGLIGENCE
(Defendant New York City)**

68. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-67 of this complaint, as though fully set forth herein.

69. Defendant New York City owed a duty to plaintiff to adequately screen prospective police officers, and to train, supervise and otherwise control its police officers in the use of their powers incidental to their employment. Defendant New York City failed to provide adequate screening, training, supervision, and control of the individual defendants, which failure constitutes negligence.

WHEREFORE, plaintiff demands the following relief:

- a. Compensatory damages in the amount of one million (\$1,000,000 dollars).
- b. Punitive damages in the amount of one million (\$1,000,000 dollars).
- c. Reasonable attorneys fees and costs; and
- d. Such other and further relief as appears reasonable and just.

Dated: New York, New York
January 31, 2014



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ORIGINAL TRANSCRIPT

1

50-H HEARING

- - - - -
In the Matter of the Claim of
OMAR HERNANDEZ,

-against-
THE CITY OF NEW YORK.

- - - - -
BLA#: 2013PI004757

160 Broadway
New York, New York

September 11, 2013
1:33 p.m.

EXAMINATION of OMAR HERNANDEZ, held at
the above time and place, pursuant to Notice,
taken before Koel Dressman, a reporter and
Notary Public within and for the State of New
York.

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A p p e a r a n c e s :

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Attorney for Respondent
49 Walworth Avenue
Scarsdale, New York 10583
BY: FRANCESCA SABBATINO, ESQ., of Counsel

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O M A R H E R N A N D E Z, the witness herein,
having first been duly sworn by a
Notary Public of the State of New York,
was examined and testified as follows:

EXAMINATION BY

MS. SABBATINO:

0 State your name for the record,

please.

A. Omar Hernandez.

Q State your address for the record, please.

A 801 Neill Avenue, Bronx, New York
10462.

0 Good afternoon, Mr. Hernandez.

My name is Francesca Sabbatino. I'm an attorney, and I'm here on behalf of the City of New York. I'm going to ask you questions today about the claim that you're bringing.

I have a couple of instructions for you before we begin. When I ask you a question, I need you to give me a verbal, a spoken answer. You can't just nod or gesture or use a non-word answer like uh-huh. Okay, you understand?

O. Hernandez

4

A I do.

Q Please wait until I finish asking the question completely before you begin the answer. It's very difficult for the court reporter to take down what we're saying if we're talking at the same time.

If I ask you a question you don't understand, if the question is not clear or you're confused by it, it's fine. Just stop me and tell me you don't understand and we'll explain it. Okay?

A Okay.

Q Have you understood the
instructions so far?

A Yes, I do.

Q What's your date of birth?

A January 5, 1989

Q What is your Social Security
number?

A 133 - 74 = 5519

Q Are you currently employed?

A No

Q Have you been employed in the
past?

1 O. Hernandez

5

2 A Yes.

3 Q When was the last time you
4 worked?

5 A The summer, this past summer.

6 Q How long did you work?

7 A For the entire summer, starting
8 June 20th, I believe.

9 Q Who did you work for?

10 A Stellar Management.

11 Q Where is Stellar Management
12 located?

13 A The actual management location,
14 156 William Street.

15 Q Is that Manhattan?

16 A Yes.

17 Q Where did you work?

18 A 801 Neill Avenue.

19 Q What did you do at 801 Neill
20 Avenue?

21 A I was a lifeguard there.

22 Q What's located at 801 Neill
23 Avenue?

24 A My residence and a swimming pool.

25 Q Is that a swimming pool that is

1 | O. Hernandez

6

2 part of the residential building?

3 A Yes.

4 Q How long have you lived at 801
5 Neill Avenue?

6 A Since I was seven-years-old.

7 Q Have you ever lived at 808 Neill?

8 A No.

9 Q Who do you live there with?

10 A My mother.

11 Q What's your mother's name?

12 A Luz Hernandez.

13 Q Does anyone else live in the
14 household?

15 A No.

16 Q Was this a summer job only?

17 | A Yes ..

18 | O Are you in school?

19 A Yes.

20 Q Where do you go to school

21 A City College.

22 Q Which one?

23 A The one in Harlem, the one on
24 Convent Avenue.

Q When did you start going there?

1 O. Hernandez

7

2 A Two semesters ago, so I would say
3 2012, the beginning of 2012.

4 Q When you say the beginning, you
5 mean September 2012 or January 2012?

6 A September 2011.

7 Q Is that when you started at City
8 College, in September of 2011? Was that the
9 first post high school education --

10 A No.

11 Q Where did you go for post high
12 school education, other than City College?

13 A Westchester Community College.

14 Q When did you go there?

15 A I don't remember the exact dates.

16 Q How many semesters did you go
17 there for?

18 A Four, I would say.

19 Q Did you receive a degree?

20 A No.

21 Q What were you studying?

22 A Computer science.

23 Q Have you gone to any other post
24 high school schools?

25 A No.

1 O. Hernandez 8

2 Q Are you studying anything in
3 particular now at City College?

4 A In particular, right now at the
5 moment, no, undecided.

6 Q Are you a full time or part-time
7 student?

8 A Part time.

9 Q How many credits do you carry?

10 A After I left Westchester, I had
11 forty-five. When I transferred to City
12 College I had twenty-seven and now I have, I
13 believe, forty-three.

14 Q How many credits are you
15 registered for this semester?

16 A Eight.

17 Q Did you go to City College for
18 the winter and spring semester of 2013?

19 A The only semester I missed was
20 last semester.

21 Q What is last semester, what
22 semester is that?

23 A That would be the spring.

24 Q Spring of 2013?

25 A Yes.

1 O. Hernandez

9

2 Q Why did you miss spring of 2013?

3 A I missed the deadline for

4 registration.

5 Q Why did you miss the deadline?

6 A Because I wasn't familiar with
7 how fast that school fills up classes
8 compared to Westchester.

9 Q Do you receive Medicaid?

10 A Currently, yes.

11 Q Do you have your card with you?

12 A No.

13 MS. SABBATINO: Leave a
14 space in the record, and I'll ask
15 that the Medicaid ID number be
16 provided.

17 (INSERT)

18 Q Do you receive Medicare or Social
19 Security disability?

20 A No.

21 Q Do you receive any public
22 assistance benefits?

23 A No.

24 Q When was your last day at work at
25 Steller Management?

1 O. Hernandez 10

2 A Labor Day.

3 Q Does the pool close then?

4 A Yes.

5 Q Was it a full-time job?

6 A Yes, fifty-six hours a week.

7 Q What was the rate of pay per
8 hour?

9 A Fourteen.

10 Q Were you working anywhere else in
11 2013, other than the job as the lifeguard?

12 A No.

13 Q Did you work anywhere in 2012?

14 A Yes.

15 Q Where?

16 A On the upper east side, it was
17 called the Claridge Club, with Milford
18 Management.

19 Q What did you do at the Claridge
20 Club?

21 A Lifeguard and receptionist.

22 Q When did you work there?

23 A I would say for about a year, the
24 year of 2012.

25 Q Was it full time or part time?

1 O. Hernandez

11

2 A Part time.

3 Q Do you receive any public
4 assistance benefits, cash payments, food
5 stamps or anything like that?

6 A No.

7 Q What date did this incident
8 happen?

9 A November 30th.

10 Q What year?

11 A 2012.

12 Q At what time?

13 A After 2:00 in the morning. I
14 don't remember the exact time.

15 Q Where did it happen?

16 A It happened on east -- it's on
17 East Tremont. Well, it started on East
18 Tremont and ended on Pierce Avenue, I
19 believe, or Sackett, it could be Sackett.

20 Q Where on East Tremont did it
21 start?

22 A East Tremont and Morris Park, I
23 would say.

24 Q Were you alone when it started?

25 A No, I was with my girlfriend.

1 O. Hernandez 12

2 Q What's your girlfriend's name?

3 A Astrid Ruiz.

4 Q What is her address?

5 A I don't know the number, I don't
6 know the building number.

7 Q What street is she on?

8 A Sanford.

9 Q Is that in the Bronx?

10 A It's Queens, Flushing.

11 Q Sanford Avenue?

12 A Yes.

13 Q Do you know what cross street on
14 Sanford?

15 A Parsons Boulevard.

16 Q Was there anyone else with you?

17 A No.

18 Q Where on East Tremont did it
19 begin; in a building, on the road, where?

20 A On the road.

21 Q Were you in a vehicle?

22 A Yes.

23 Q What kind of vehicle were you in?

24 A A '96, 240SX.

25 MR. COHEN: It's a Nissan?

1 O. Hernandez

13

2 THE WITNESS: Nissan.

3 Q Who was the owner of the vehicle?

4 A I was.

5 Q How long had you owned the car?

6 A About maybe a year or maybe six
7 months.

8 Q Did you make any modifications to
9 the vehicle?

10 A No.

11 Q What color?

12 A White.

13 Q Do you still have it?

14 A No.

15 Q Where is it?

16 A It's totaled.

17 Q When did it get totaled?

18 A The same night.

19 Q How did it get totaled?

20 A You want me to start explaining
21 the story?

22 Q The totalling of the vehicle is
23 part of the story?

24 A Yes.

25 Q We'll try to take it

1 O. Hernandez

14

2 step-by-step.

3 Where were you and Astrid coming
4 from?

5 A A friend's house.

6 Q What is the name of the friend?

7 A Sorry, the name of the friend?

8 Q Yes.

9 A John.

10 Q What's John's last name?

11 A I don't know his last name, it
12 was a mutual friend.

13 Q Where is John's place?

14 A It's on East Tremont.

15 Q Where on East Tremont?

16 A By Morris Park.

17 Q Do you have the number of the
18 house anywhere?

19 A No, I don't.

20 Q Had you ever been there before?

21 A No.

22 Q What time did you arrive at
23 John's house?

24 A I would say around midnight,
25 11:00.

1 O. Hernandez

15

2 Q What was the purpose of going
3 there?

4 A Astrid had to pick up something
5 from him.

6 Q Do you know what she had to pick
7 up?

8 A Something, clothing that his
9 girlfriend had got her or something.

10 Q Where were you before you went to
11 John's house?

12 A Home.

13 Q Was Astrid with you at home?

14 A No.

15 Q Had you left the house for any
16 reason that day before you and Astrid left to
17 go to John?

18 A I don't recall, I don't remember.

19 Q Did you consume any alcohol
20 within twelve hours before the incident?

21 A No.

22 Q Did you take any drugs of any
23 kind within twelve hours before the incident?

24 A No.

25 Q Were you taking any medications

O. Hernandez

16

at the time the incident happened?

A No.

Q Did you have a driver's license
on the date of this incident?

A Yes.

Q What state is it from?

A New York

Q Were there any restrictions on
it?

A No

Q Was it valid on the date of the
incident?

A Yes

0 Was the vehicle registered?

A Yes

8 In what state?

A New York

Q Was the registration valid on the date of the incident?

A Yes

Q Was the car insured?

A Yes

○ Who insured the vehicle?

A My mother.

1 O. Hernandez

17

2 Q What company?

3 A I don't know.

4 Q The title to the car, whose name
5 is it in?

6 A Mine, I believe.

7 Q The registration to the vehicle,
8 whose name is on the registration?

9 A I believe mine.

10 Q Did you have the registration
11 documents with you at the time of the incident?

12 A Yes.

13 Q Where were they?

14 A In my wallet, I believe.

15 Q What about the insurance
16 documents, did you have those with you at the
17 time of the incident?

18 A I think everything was in my
19 wallet.

20 Q When was the last time before the
21 incident occurred that the vehicle had been
22 inspected?

23 A Small details like this I can't
24 remember.

25 Q Was the inspection valid at the

1 O. Hernandez

18

2 time the incident happened or was it expired?

3 A It was valid.

4 Q Did you go into John's apartment
5 or house with your girlfriend?

6 A No.

7 Q Where did you wait?

8 A Outside.

9 Q Where outside?

10 A On East Tremont by Morris Park,
11 outside of my car, I just waited outside.

12 Q What were you wearing that night?

13 A I don't remember.

14 Q How tall are you?

15 A 6'1.

16 Q How much did you weigh at that
17 time?

18 A 190.

19 Q If I were to ask you to describe
20 your skin complexion, how would you describe
21 it?

22 A The actual color?

23 Q Well, if someone were to ask you
24 to describe your skin complexion --

25 A It was the winter time, so I was

1 O. Hernandez

19

2 a lot paler than this.

3 Q Would you say you were white
4 skinned, light skinned?

5 A White skinned.

6 Q And you have a bald head; is that
7 correct?

8 A Yes.

9 Q Is that how you were wearing your
10 hair at that time?

11 A Yes.

12 Q Were you wearing a hat or cap
13 that night?

14 A I may have had a winter cap on.

15 Q Like a knitted cap?

16 A Like a beanie kind of thing, I'm
17 not sure.

18 Q You're wearing a full beard and
19 mustache today, did you have facial hair that
20 time?

21 A I did have facial hair.

22 Q What kind of facial hair were you
23 wearing that day?

24 A Probably around the same.

25 Q How long were you standing

1 O. Hernandez

20

2 waiting for your girlfriend?

3 A I don't recall.

4 Q Was it a minute, was it an hour,
5 can you estimate?

6 A I don't remember, I really don't
7 remember.

8 Q Did you have anything in your
9 hands during the time that you were waiting?

10 A Keys, I don't know.

11 Q Did you have a cell phone with
12 you?

13 A I guess in my pocket, maybe.

14 Q Where specifically in relation to
15 the car were you standing and waiting?

16 A I'm not sure. I might have went
17 for a walk during that period.

18 Q Do you recall where you went?

19 A No.

20 Q As you sit here today, do you
21 have an actual recollection of going for a
22 walk while you were waiting for Astrid?

23 A No.

24 Q Did you see anyone that you knew
25 during the time that you were waiting for

1 O. Hernandez

21

2 Astrid?

3 A No, not that I recall.

4 Q Did anyone approach you during
5 the time you were waiting for Astrid?

6 A No.

7 Q Did Astrid return before the
8 incident began?

9 A Yes.

10 Q How long before the incident
11 began did Astrid return?

12 A I don't recall.

13 Q Was it a second, a minute, an
14 hour, can you approximate in any way?

15 A Before the incident?

16 Q Yes, let's get the chronology
17 correct.

18 You drove from your house to
19 John; is that correct?

20 A Yes.

21 Q You stayed down and she went
22 upstairs; is that correct?

23 A Right.

24 Q She came down before the incident
25 began or after?

1 O. Hernandez

22

2 A Before.

3 Q How long before the incident
4 began did she return?

5 A Like ten minutes.

6 Q Where did you spend those ten
7 minutes?

8 A I'm sorry, if she came down, how
9 long before the incident occurred had she
10 been downstairs?

11 Q Exactly.

12 A Right, well, the incident -- oh,
13 I would say maybe two minutes.

14 Q When she came downstairs, did you
15 see her come down?

16 A She probably called me and she
17 said I'm outside or whatever, so I just met
18 up with her and we left.

19 Q Where had you parked the car?

20 A On East Tremont.

21 Q How far from John's place had you
22 parked the car?

23 A About a block.

24 Q Do you remember the route you
25 took to drive from the place where you parked

1 O. Hernandez

23

2 the car to where you picked her up?

3 A I didn't, she met me at the car.

4 Q When she met you at the car, were
5 you inside or outside the car?

6 A I don't recall.

7 Q What happened after she arrived
8 at the car, what happened next?

9 A We got in and left.

10 Q Where was your intended destination?

11 A Home.

12 Q Did she have anything in her
13 hands when she arrived at the car?

14 A Just the stuff that she brought
15 down.

16 Q What was it?

17 A It was a bag.

18 Q Did you pull away from the curb?

19 A Yes.

20 Q After you pulled away from the
21 curb, where did you go next?

22 A I pulled out of my parking spot,
23 I went to make a U-turn, and this is where
24 the incident began.

25 Q You were parked on East Tremont;

1 O. Hernandez

24

2 is that correct?

3 A Yes.

4 Q East Tremont is a two-way street?

5 A Yes.

6 Q Is this a residential block,
7 commercial block or mixed?

8 A Mixed.

9 Q So, there is commercial usage on
10 that street?

11 A Yes.

12 Q Did you see any signs posed that
13 prohibited making a U-turn?

14 A No.

15 Q Are you aware of what the rules
16 are concerning making a U-turn?

17 A Yes.

18 Q What is your understanding of
19 what the rules are about making a U-turn on a
20 street like East Tremont?

21 A So, I may not be fully aware for
22 the laws of making U-turns.

23 Q Is there a double yellow line
24 that separates --

25 A Yes.

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2 Q Hold on. -- the two directions
3 of travel?

4 A Yes.

5 Q What direction did you initially
6 pull away before making the U-turn?

7 A Which direction?

8 Q North, south, east, west, do you
9 know?

10 A No.

11 Q If you hadn't made the U-turn,
12 what was the next cross street you would have
13 reached?

14 A Morris Park.

15 Q How far did you go before you
16 made the turn?

17 A Ten feet.

18 Q Did you do anything with respect
19 to the operation of the vehicle before you
20 made the U-turn?

21 A I don't understand.

22 Q Did you put a signal on, what did
23 you do, if anything?

24 A I think I signaled.

25 Q As you sit here today, do you

1 O. Hernandez

26

2 have a recollection of signaling?

3 A No.

4 Q Did you put the headlights on?

5 A Yes.

6 Q Is it automatic or standard
7 transmission?

8 A Standard.

9 Q In the direction you were
10 initially traveling towards Morris Park, how
11 many lanes of traffic are there; is there one
12 lane on Tremont for cars to travel on heading
13 towards Morris Park or is there more than one
14 lane?

15 A I think it's one lane up until
16 the intersection where it splits off. I
17 think the cars that can turn go in one and
18 you can go straight.

19 Q When you were parked waiting for
20 Astrid to come back, were you parked against
21 the curb or double parked?

22 A Against the curb.

23 Q Were you parked in a spot that
24 permitted parking or were there any
25 restrictions in that area?

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2 A Permitted.

3 Q Were you able to successfully
4 complete the U-turn?

5 A Somewhat.

6 Q What happened when you made the
7 U-turn?

8 A I accelerated the car and the
9 back wheels spun out, so that's when the cop
10 car saw me.

11 Q What gear were you in when you
12 accelerated?

13 A First.

14 Q Was the clutch engaged when you
15 attempted to accelerate or had you come off
16 the clutch?

17 A It was engaged.

18 Q So, your foot was down on the
19 clutch?

20 A Engaged, meaning the clutch was
21 attached to the transmission, so power was
22 going to the wheels.

23 Q What were the roadway conditions
24 like that evening?

25 A Dry.

1

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2

Q Do you know what caused the rear
wheels to spin?

4

A Aggressive driving.

5

Q What was aggressive about the way
you were driving?

7

A I stepped on the gas a little too
hard.

9

Q Is there a reason why you stepped
aggressively on the gas?

11

A No.

12

Q Did you lose control of the
vehicle?

14

A No.

15

Q Where was the police car that you
observed after you spun the rear wheels?

17

A Coming towards me after the --
like at the intersection.

19

Q Which intersection?

20

A Of Morris Park and East Tremont.

21

Q Was the police car going towards
the direction you wanted to go after the
U-turn or was it going the way you were going
before the U-turn?

25

A I made the U-turn and he was

1 O. Hernandez

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2 coming towards the direction I wanted to go.

3 Q So, he would have been behind you
4 or were you coming head-to-head?

5 A When I pulled out the parking
6 spot he must have been behind me, and when I
7 made the U-turn he was now in front of me.

8 Q Was it a marked or unmarked car?

9 A Marked.

10 Q When the wheels spun, did they
11 smoke?

12 A I don't think so.

13 Q Did they leave a skid mark?

14 A No.

15 Q So, what happened next after you
16 saw the police car?

17 A I kept driving, and I didn't know
18 at first that he was trying to pull me over.

19 Q How far did you drive before you
20 realized that you were being pulled over?

21 A Probably when I got towards the
22 intersection.

23 Q Which intersection?

24 A Of Morris Park and East Tremont.

25 Q I'm a little confused. I thought

1 O. Hernandez 30

2 -- and I may have been, maybe you or maybe
3 me, but let's try to clear it up.

4 I thought when you said when you
5 pulled out of the parking space, before you
6 made the U-turn, you were heading towards
7 Morris Park?

8 A No

9 Q What was the name of the street
10 that you were heading towards before you
11 pulled the U-turn?

12 A All the way down, that would
13 probably be called Pelham Parkway.

14 Q So, when you got into the car,
15 Morris Park would have been behind you?

16 A Yes.

17 Q How far away from the
18 intersection of Morris Park had you parked
19 the car?

20 A I would say 200 feet, 300 feet.

21 Q How much of that distance did you
22 travel before you realized you were being
23 pulled over?

24 A Well, I parked the car 200, 300
25 feet away and then drove an extra maybe 200.

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2 300 feet and then made the U-turn, so I
3 started driving towards Morris Park now at
4 this point and that's when I saw the cop.

5 Q I thought you said you went only
6 ten feet before you made the U-turn?

7 A Oh, I drove a little bit and then
8 ten feet -- when you're in a car, I don't
9 know, it's hard to judge feet.

10 Q You have difficulty judging
11 between ten and 200 feet?

12 A No, but in the car it's kind of
13 irrelevant as to where he pulled me over or
14 tried to.

15 Q That wasn't the question I was
16 asking.

17 When I asked you before about how
18 far you traveled before you made the U-turn,
19 that is from the place you parked to the
20 place where you made the U-turn, you told me
21 you went ten feet?

22 A Okay, so ten feet, yes.

23 Q But now you said you went 200
24 feet before making the U-turn, coming back --

25 A No, it wasn't that much.

1 O. Hernandez

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2 Q How far from the intersection of
3 Morris Park were you when you realized you
4 were being pulled over?

5 A I had probably just gotten to the
6 intersection.

7 Q What made you realize you were
8 being pulled over?

9 A I saw him turn on his lights.

10 Q Did you actually see the lights
11 come on?

12 A Yeah, in my rear view.

13 Q When you passed him after you
14 made the U-turn, did he have lights on?

15 A No.

16 Q Did you keep him under
17 observation after you passed him until the
18 moment that you noticed the lights on?

19 A No.

20 Q Did you know he was behind you
21 before you saw the lights?

22 A Well, yeah, I saw him after, but
23 I didn't see any lights turn on.

24 Q What did you see, what did you
25 observe the police vehicle do after you

1 O. Hernandez 33

2 passed him heading towards Morris Park?

3 A He turned on his lights.

4 Q But you testified previously that
5 after you made the U-turn you saw the police
6 officer and now you are heading in the
7 opposite direction; is that correct?

8 A Right, and then he made the
9 U-turn to come behind me.

10 Q You saw him make a U-turn?

11 A Yeah.

12 Q When you saw him make the U-turn
13 where were you, how far from the intersection
14 of Morris Park?

15 A I was probably right before the
16 intersection.

17 Q How much time passed from when
18 you saw him make the U-turn until you saw the
19 lights come on?

20 A Probably right away.

21 Q When you saw the lights came on,
22 you came to the conclusion that he wanted to
23 pull you over; is that correct?

24 A Yes.

25 Q What, if anything, did you do

1 O. Hernandez

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2 after you came to the conclusion that he
3 wanted to pull you over?

4 A Can you repeat the question?

5 Q What, if anything, did you do
6 when you came to the realization or
7 conclusion that he was pulling you over?

8 A What do I think I did that he
9 wanted to pull me over for?

10 Q No. What did you do with your
11 vehicle when you came to the realization that
12 he was pulling you over?

13 A I tried to flee.

14 Q Why did you try to flee?

15 A Because I kind of freaked out. I
16 was with my girlfriend, I didn't want to get
17 pulled over.

18 Q Why didn't you want to get pulled
19 over?

20 A Because I didn't want to deal
21 with the ticket.

22 Q Did you have any tickets already,
23 any open tickets?

24 A No.

25 Q Did you have any open criminal

1 O. Hernandez

35

2 cases or violations against you?

3 A No.

4 Q Did you have any outstanding
5 warrants?

6 A No.

7 Q What did you do to try to flee?

8 A Sped away.

9 Q What did you do to speed away?

10 A Sorry?

11 Q What did you do with the car, how
12 did you do it? The last time you told me you
13 said you were in first gear when you made the
14 turn and the wheels spun. Did you shift
15 between completing the U-turn and the point
16 when you noticed the police officer?

17 A Well, after I made the U-turn I
18 probably threw it in neutral as I rolled
19 towards the intersection, and then when I saw
20 him turn his lights on, when I tried to get
21 away, I threw it in first again.

22 Q Why did you place it in neutral
23 as you were coming up to the intersection?

24 A Because there was no reason to go
25 into second, it was probably a red light.

1

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2

Q So, you shifted out of gear into
neutral in preparation for stopping at the
light at Morris Park?

5

A Yes.

6

Q Did that light change before you
went through trying to flee?

8

A I don't recall.

9

Q How far did you flee?

10

A To Lurting Avenue and Sackett.

11

Q How far is that in terms of
blocks?

13

A Probably four, five, six blocks.

14

Q So, you are on Tremont, East
Tremont?

16

A Yes.

17

Q You realized you're being pulled
over, you run, you go through the
intersection of Morris Park; is that correct?

20

A Right.

21

Q After you get through the
intersection of Morris Park, do you continue
on Tremont?

24

A No, I turned onto Morris Park.

25

Q Which way do you turn?

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2 A Right onto Morris Park.

3 Q Were you planning on turning
4 right on Morris Park even before you realized
5 you were being pulled over?

6 A Right, that is the way to my
7 house.

8 Q How many blocks did you travel
9 fleeing from the police on Morris Park?

10 A Maybe four.

11 Q What block did you travel to
12 while fleeing from the police on Morris Park?

13 A I would say the block after
14 Lurting Avenue.

15 Q Which is what?

16 A I don't recall.

17 Q When you reached the block after
18 Lurting and fleeing from the police, what did
19 you do next?

20 A When I reached the block after
21 Lurting?

22 Q Yes.

23 A I went around that block.

24 Q Which way did you go, did you
25 make a left or right?

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A I made a right, a right, and
another right, I believe, back onto Lurting.

Q When you circled the block, were you traveling in the correct direction for traffic or were you against traffic?

A The only time that I went against traffic was on Morris Park. There's a small divider in the middle, and I went on the other side of it for one block.

Q Is this before or after you went around that block?

A This is before

Q So, while you were fleeing the police you crossed over the double yellow line and traveled for one block in the wrong direction; is that correct?

A Yes

Q Were there any vehicles coming towards you in the wrong direction as you were traveling on the opposite side of the roadway fleeing the police?

A No, it was very late

Q What speed were you traveling on
Morris Park as you were traveling on the

1 O. Hernandez

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2 wrong side of the roadway?

3 A I don't recall.

4 Q Can you estimate the speed?

5 A Maybe thirty.

6 Q How much horse power does the
7 240ZX have?

8 A 155.

9 Q What gear were you in as you were
10 traveling on Morris Park in the wrong way?

11 A I cannot remember details like
12 that.

13 Q Was your girlfriend saying
14 anything during this?

15 A Not that I remember.

16 Q Did she ask you to stop?

17 A No.

18 Q Did she encourage you not to
19 stop?

20 A No.

21 Q Were you saying anything?

22 A I think I told her don't worry,
23 we're almost home.

24 Q Where were you when you told her
25 don't worry, we're almost home?

1 O. Hernandez

40

2 A Probably when we got to the block
3 after Lurting.

4 Q What was the purpose of telling
5 her we're almost home?

6 A Oh, because the distance between
7 me and the police vehicle was decreasing.

8 Q So, you thought you would outrun
9 him?

10 A Yes.

11 Q You thought you would be able to
12 get away and get home?

13 A Yes.

14 Q Did the officer follow you onto
15 the wrong side of the road when you jumped
16 over the double yellow line and went across
17 the median?

18 A I don't recall.

19 Q Did you actually have to drive
20 over the median divider to get to the other
21 side of the road?

22 A I'm sorry, median divider?

23 Q I thought you said there was --

24 A There's a gate separating from
25 one side to the other, but before, like on

1 O. Hernandez

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2 East Tremont, you can -- so, if this is
3 Morris Park and this is East Tremont, this is
4 the gate. You can either go this way, the
5 proper way, or around the gate.

6 Q The gate, what is that, like a
7 divider?

8 A It's just a gate, it's like a
9 black --

10 Q Fence, is it a fence?

11 A Fence.

12 Q A gate is something you open and
13 close.

14 A It could be a fixed gate, also.

15 Q So, this gate runs --

16 A It's a fence.

17 Q This fence divides the two ways
18 of traffic --

19 A Only for that block.

20 Q So, you went around the beginning
21 of this fence?

22 A Yes.

23 Q You made a right off of Morris
24 Park. Do you know the name of the street you
25 made the right off of?

1 O. Hernandez

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2 A No, I don't.

3 Q When you made a right off of
4 Morris Park onto that street to go around the
5 block, did you see the police officer?

6 A When I made the right off of
7 Morris Park after I finished, I completed
8 that street, he -- yes, he was like towards
9 the -- I would say a quarter of the way up
10 the block.

11 Q What distance separated you from
12 him on that street you made the right onto
13 when you were fleeing from him?

14 A Like I said, while I was at the
15 end of the block he might have been a quarter
16 of the way up the block.

17 Q When you were at the far end of
18 the block?

19 A Yes.

20 Q Was there a traffic control
21 device at the next intersection you came to?

22 A The only -- meaning, stop sign or
23 light?

24 Q Stop sign or light, was there a
25 stop sign or light at that intersection?

1 O. Hernandez

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2 A At that intersection, no, but
3 back when I came around the block to Morris
4 Park there was a light.

5 Q Did you stop at that light?

6 A No, I think -- I believe it was
7 green at the time.

8 Q When you made the first right off
9 of that street, you went one block? I'm
10 talking about the move that you made to go
11 around the block. You said you made a right
12 onto the street and you went right, a right,
13 and a right?

14 A Right.

15 Q Where did you end up back at?

16 A Now I'm on Lurting.

17 Q Is Lurting a one-way or two-way
18 street?

19 A It's a one-way street.

20 Q Were you going in the correct
21 direction?

22 A Yes.

23 Q When you got around to Lurting,
24 did you see where the police officer was?

25 A I think when I got to the end of

1 O. Hernandez

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2 Lurting he was at the beginning of the
3 street.

4 Q One block away?

5 A A block away.

6 Q When you got to the end of
7 Lurting, was that before or after you told
8 your girlfriend don't worry, we're almost
9 home?

10 A I don't recall.

11 Q When you got to the end of
12 Lurting, what happened next?

13 A The rest of the trip was
14 straight.

15 Q On Lurting?

16 A Yes.

17 Q How many blocks did you continue
18 to drive on Lurting trying to evade the
19 police?

20 A Morris Park, Pierce, and then
21 Sackett, so three.

22 Q Did you see the police officer
23 again as you were traveling along Lurting
24 after the first time you just told me about?

25 A I don't know, I wasn't looking

1 O. Hernandez

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2 back too much.

3 Q What speed were you traveling?

4 A I don't know.

5 Q Was it more or less than thirty
6 miles per hour?

7 A At the time of the crash, it was
8 probably around twenty miles an hour.

9 Q So, you crashed your car?

10 A Yes.

11 Q What caused you to crash your
12 car?

13 A My brakes, I think, locked up.

14 Q Why did you apply the brakes?

15 A To slow down to make the turn.

16 Q Onto what street?

17 A Sackett.

18 Q Was the roadway dry?

19 A I'm not sure. At that point, I
20 believe it was dry.

21 Q Were you turning right or left on
22 Sackett?

23 A It's a one-way, right.

24 Q Did you down shift or did you
25 just brake?

1 O. Hernandez

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2 A Both.

3 Q What gear were you in and what
4 gear did you shift down into?

5 A I was probably at three, and I
6 downshifted to second.

7 Q What's the maximum speed that you
8 feel you can travel in third gear on your
9 car?

10 A I'm not sure.

11 Q When you applied the brakes, what
12 happened to the vehicle?

13 A After slowing down the wheels
14 locked up, I guess, in the front and it was
15 just sliding.

16 Q In which direction?

17 A Straight.

18 Q How far did it slide?

19 A I'm not sure, I don't know. I
20 don't want to judge.

21 Q Were you wearing a seat belt?

22 A Yes.

23 Q Was your girlfriend wearing a
24 seat belt?

25 A Yes.

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2 Q Did your car come into contact
3 with something?

4 A The barrier, like a concrete
5 barrier.

6 Q Where was the concrete barrier?

7 A Right at the end of the block,
8 because Sackett --

9 Q Is a T?

10 A Yeah, it's a T. On the other
11 side of the barrier is a railway, so there's
12 barriers there.

13 Q What part of your vehicle came
14 into contact with the concrete barrier as you
15 were fleeing the police?

16 A The front.

17 Q How would you describe the impact
18 between the front of your vehicle and
19 concrete barrier; light, medium, heavy or
20 something else?

21 A Medium to heavy.

22 Q Did your body, as a result of the
23 contact with the concrete barrier, move in
24 any direction?

25 A Yeah.

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2 Q Which way did it move?

3 A Forward.

4 Q Did you strike anything on the
5 inside of the vehicle?

6 A No.

7 Q Were you bleeding following the
8 incident?

9 A No.

10 Q Did you feel any pain in any part
11 of your body after striking the concrete
12 barrier?

13 A No.

14 Q Was your girlfriend injured in
15 the accident?

16 A No.

17 Q Did she make any complaints to
18 you?

19 A No.

20 Q What did you do after you ran
21 into the concrete barrier?

22 A I checked to see if my girlfriend
23 was okay. After I saw that she was, I undid
24 my seat belt, I got out of the car, and at
25 that point I saw the cop car coming towards

1 O. Hernandez

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2 my car.

3 Q Did it have lights and sirens on?

4 A Yeah.

5 Q Was it one police car or more
6 than one that you saw coming?

7 A One police car.

8 Q Was it the same one you had been
9 trying to avoid?

10 A Yes.

11 Q How long did this go on that you
12 were trying to evade this officer?

13 A Just a brief few minutes.

14 Q What does a few minutes mean to
15 you?

16 A Maybe the whole thing, maybe a
17 minute-and-a-half, two minutes.

18 Q So, in a minute-and-a-half to two
19 minutes you traveled down Tremont, up Morris
20 Park, around the block, across Lurting, and
21 you hit a barrier?

22 A Yeah, around.

23 Q Can you estimate the speed you
24 were traveling during that time?

25 A No, I can't.

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2 Q How far away from you was the
3 officer when you noticed him after getting
4 out the car after crashing it?

5 A Probably like halfway down the
6 block.

7 Q Half a block away?

8 A When I got out of the car he was
9 about half a block away.

10 Q What, if anything, did you do
11 when you saw the police officer?

12 A I got down on my knees and put my
13 hands behind my head and just waited.

14 Q Why did you do that?

15 A Well, because I didn't want the
16 officer to think I had a weapon on me or any
17 other reason to use unnecessary force.

18 Q Is this how you expected this to
19 end, that you would be pulled over, down on
20 your knees in the street?

21 A Absolutely not.

22 Q How would you expect it to end?

23 A Pull into the driveway and turn
24 the car off and just go home.

25 Q Did you think the police officer

1 O. Hernandez

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2 would have recorded your license plate?

3 A I wasn't concerned with that at
4 the time.

5 Q You just didn't want a ticket?

6 A Right.

7 Q Where was your girlfriend when
8 you got out of the car and got down on your
9 knees and put your hands behind your head?

10 A In the vehicle.

11 Q Was she saying anything?

12 A She probably asked me if I was
13 okay.

14 Q After you got out of the car, was
15 she saying anything?

16 A Yeah, I think I heard her say if
17 I was okay.

18 Q What happened next after you got
19 down on your knees?

20 A Well, I was facing away from the
21 officers, but I turned around and one of
22 them -- I saw one of them coming towards me.

23 Q Did you hear the car stop, the
24 police car stop?

25 A Yeah.

1 O. Hernandez

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2 Q So, when you got down on your
3 knees, you placed your back towards the
4 officers?

5 A Right.

6 Q Is there a particular reason you
7 did that, you placed your back towards the
8 officer rather than facing the direction they
9 were coming from?

10 A I wanted them to have a clear
11 view of my hands, so I thought it would be
12 easier for them. I just wanted to make their
13 job a little simpler, to show them I was
14 complying.

15 Q Finally complying?

16 A At that point, yes.

17 Q Had they said anything to you
18 over the radio or over the loud speaker?

19 A No.

20 Q Did you consider that when you
21 took that position with your back towards the
22 police that it could be perceived as you were
23 attempting to prevent them from seeing what
24 was in front of you?

25 A No, that wasn't the case.

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2 Q I know you're telling me that
3 wasn't what was in your mind, but would you
4 think it would have been better to face them
5 when you were finally surrendering rather
6 than put your back to them so they could have
7 a clear view of your face, your expression,
8 what you were doing as you were finally
9 surrendering after this chase?

10 A I believe they had a clear view.

11 Q Of the back of you?

12 A My hands, probably the most
13 important part.

14 Q But they would have had no idea
15 what was on the ground in front of you or
16 what might have been in your waistband or
17 anything like that with your back to them?

18 A You can make the same argument as
19 if my front was towards them, you know.

20 Q So, you got down on your knees,
21 your back was facing the police officers, why
22 did you turn around?

23 A No, I just wanted to see where
24 they were with respect to my location.

25 Q Had they said anything to you

1 O. Hernandez

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2 before you turned around?

3 A No.

4 Q Did you get up to turn around or
5 did you just turn your head?

6 A I just turned my head.

7 Q Which way did you turn, left or
8 right?

9 A I don't recall.

10 Q What did you see when you turned?

11 A I saw the officers coming towards
12 me.

13 Q How many officers?

14 A Two.

15 Q What are their names?

16 A I don't know.

17 Q Were they men, women, one of
18 each?

19 A Men.

20 Q Can you describe them for me?

21 A Both of them heavyset. Not fat,
22 but built. One was white and one was black.

23 Q Do you know who got out of the
24 driver's side of the vehicle?

25 A No, I don't remember.

1

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2

Q What happened next when you
turned around and saw them coming?

4

A I just turned back.

5

Q And then what happened?

6

A The first person that came onto
me was the white officer.

8

Q Did either of them say anything
to you before they got up to you?

10

A I'm sorry, before?

11

Q Before they came over to you,
before they reached you, did any of them say
anything?

14

A No.

15

Q When you turned around to look,
were they walking, running or something else
towards you?

18

A I don't recall.

19

Q Did they have anything in their
hands?

21

A No, I don't recall.

22

Q You said that the white officer
got to you first?

24

A Yes.

25

Q What happened after the white

1 O. Hernandez

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2 officer reached you?

3 A He slammed me down to the floor.

4 Q How did he do that?

5 A From what I could feel, he put
6 one knee -- one of his knees on my back, and
7 with his hands he pushed my face into the
8 ground.

9 Q Did you say anything to the
10 officers before you were put down on the
11 ground?

12 A No.

13 Q Where was your girlfriend when
14 this happened?

15 A In the vehicle.

16 Q How far away from the vehicle
17 were you?

18 A Right like next to my driver's
19 side door.

20 Q Did you say or do anything when
21 the officer put you own on the ground?

22 A No.

23 Q What happened next after the
24 officer pushed you down onto the ground?

25 A After he slammed my face into the

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2 ground, he put my hands behind my head,
3 behind my back.

4 Q How did he do that?

5 A He grabbed one of them first and
6 yanked it to the back, and then he grabbed
7 the other one and yanked it to the back,
8 because while he slammed my face down my
9 hands were behind my head, so I really
10 couldn't break my fall. So, I just slammed
11 into the ground.

12 Q Was there anything keeping your
13 hands behind your head when he put your face
14 down; in other words, was anyone holding your
15 hands?

16 A Yes, the officer that took me
17 down, because he kind of put his hands, like,
18 kind of right behind me.

19 Q So, the white officer grabbed
20 your hands and placed you in cuffs?

21 A Yes, but either -- I don't recall
22 when, but I know after my hands were behind
23 my back the other officer got on top of me as
24 well and he punched me about seven to ten
25 times really fast. I couldn't remember how

1 O. Hernandez

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2 many times.

3 Q Where did the punches land?

4 A On my right side, on my ribs.

5 Q What did he punch you with?

6 A I think his hands.

7 Q Did he say anything before he did
8 it?

9 A He was just cursing. I don't
10 remember exactly what he was saying, but he
11 was just talking crap.

12 Q What was he saying?

13 A I remember him saying -- after he
14 punched me, I remember him getting up and the
15 cuffs were on me at this point, and he got up
16 and he kicked me in the face, then like with
17 his foot pushed my face into the ground and
18 said stupid mother fucker.

19 Q Before you were handcuffed, when
20 you were on the ground and this officer
21 punched you, did either of them say anything
22 to you?

23 A I don't recall, it happened fast.

24 Q Did you say anything?

25 A No, I didn't say anything the

1 O. Hernandez

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2 entire time.

3 Q Where was the white officer when
4 the black officer was punching you?

5 A I think he was -- the white
6 officer was getting off of me and he, the
7 other one, got on top of me.

8 Q Did they say anything to each
9 other?

10 A No, I don't recall.

11 Q After you were punched seven or
12 ten times in the right rib, what happened
13 next?

14 A The officer got up and walked
15 around and stomped on my face.

16 Q What did he do to stomp on your
17 face?

18 A I'm sorry?

19 Q What did he do, what did he stomp
20 on your face with?

21 A His boot.

22 Q Where on your face did he stomp
23 on you?

24 A Like, he walked up to me, kicked
25 me, lifted his foot up and then stomped --

1 O. Hernandez

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2 like, pushed my face down into the ground.

3 Q That's when he called you a
4 stupid mother fucker?

5 A Yes.

6 Q Where was the white officer when
7 the black officer did this?

8 A I couldn't see him.

9 Q When were you put in handcuffs?

10 A When?

11 Q Yes.

12 A While I was facedown on the
13 ground.

14 Q Before or after you got punched
15 in the ribs?

16 A I don't recall. It was while my
17 hands were behind my back, that's as much as
18 I do recall.

19 Q Did you say or do anything when
20 the officer kicked you in the face and held
21 your face down with his foot and called you a
22 stupid mother fucker?

23 A Did he what?

24 Q Did you say or do anything --

25 A No, I didn't.

1 O. Hernandez 61

2 Q Did the officers say anything to
3 each other?

4 A I don't recall that.

5 Q Did the white officer say
6 anything to you?

7 A No, he didn't say anything to me.

8 Q What happened next?

9 A They picked me off the ground or
10 whatever and the black officer -- I had my
11 college ID on my neck --

12 Q Why did you have a college ID on
13 your neck?

14 A I had school that day, I believe.

15 Q Had you been wearing it the whole
16 time?

17 A Not all day.

18 Q What happened next after the
19 police officer picked you up off the ground?

20 A The black officer yanked the
21 college ID off of my neck.

22 Q Did he say why he was doing that?

23 A No.

24 Q What happened next?

25 A After the ID broke, that's it.

1 O. Hernandez 62

2 They put me in the police car, I believe, and
3 then that was it.

4 Q Where were you taken?

5 A To the precinct.

6 Q Which precinct?

7 A I think the one on -- I'm not
8 sure. I think it's either 48th or 49th.

9 Q Where was your girlfriend after
10 the police approached you?

11 A She was sitting in the driver's
12 seat the whole time -- I mean the passenger.

13 Q Did she record any of this?

14 A No, but she had a clear view of
15 what happened.

16 Q Were there any witnesses to the
17 incident, other than the participants and
18 your girlfriend?

19 A No, it was late.

20 Q Did your girlfriend ever tell you
21 from that moment until today what she did
22 after the police took you away?

23 A No, they told her -- they asked
24 her if she needed, like, to go to the
25 hospital, I think. I don't remember. I do

1 O. Hernandez 63

2 remember she came to the precinct, though.

3 Q Did you hear the police ask her
4 if she needed medical assistance or is this
5 something she told you happened?

6 A I think she told me, but I don't
7 remember exactly what she said.

8 Q Did she require medical
9 assistance?

10 A No.

11 Q Was she injured in the accident
12 at all?

13 A No.

14 Q Did the officers say anything to
15 you on the ride to the precinct?

16 A No, I can't remember.

17 Q Did you say anything to the
18 officers on the ride to the precinct?

19 A They just asked -- the officers
20 that took me to the precinct were not there
21 same officers that made the arrest and the
22 assault.

23 Q Who took you to the precinct?

24 A I don't remember their names, it
25 was a Spanish cop.

1 O. Hernandez

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2 Q When did they arrive at the
3 scene?

4 A Maybe five minutes in.

5 Q Where were you when the other
6 officers arrived, standing on the ground?

7 A I was probably standing at that
8 point.

9 Q Was this before or after you
10 claim the officers hit you in the ribs and
11 slammed your face into the ground?

12 A This was after, they arrived
13 after.

14 Q Did you hear the police that
15 arrived say anything to the police that
16 pulled you over?

17 A No.

18 Q Did you hear the police that
19 pulled you over say anything to the new
20 police that arrived?

21 A No.

22 Q What, if anything, did the police
23 who transported you to the precinct say
24 either to you or to each other or over the
25 radio on the ride to the precinct?

1

O. Hernandez

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2

A Nothing, just the same thing.

3

They asked why, and I just told them that I
didn't want to get a ticket, and that was the
end of the conversation.

6

Q What do you mean they asked why?

7

A They asked why did I run, why did
I try to run.

9

Q What did you tell them?

10

A I just wanted to avoid getting a
ticket.

12

Q Did they say anything else on the
ride to the precinct?

14

A No.

15

Q How long were you at the
precinct?

17

A Until the morning.

18

Q It was already about 2:30 in the
morning when this occurred --

20

A Until may 6:00 something a.m.

21

Q At 6:00 a.m. where did you go?

22

A Central.

23

Q Central Booking?

24

A Yes.

25

Q During those hours you were at

1 O. Hernandez 66

2 the precinct, where were you held?

3 A In the cell there.

4 Q Were you fingerprinted?

5 A Yes.

6 Q Were you photographed at the
7 precinct?

8 A I believe so.

9 Q Did you make any complaints or
10 ask for anything while you were at the
11 precinct?

12 A No.

13 Q Were you bleeding anywhere?

14 A Yes.

15 Q Where?

16 A On my face.

17 Q Where on your face?

18 A I had a few gashes and cuts on my
19 face.

20 Q Where were they located?

21 A I have the photos.

22 Q Can you recall?

23 A Forehead, on my eyebrow.

24 Q Which eyebrow?

25 A I believe the left. I have to

1 O. Hernandez 67

2 look at the photos.

3 Q Do you have the photos?

4 MR. COHEN: I have a copy
5 for you.

6 MS. SABBATINO: Mark these,
7 please.

8 (Photographs were marked as
9 Respondent's Exhibits A through M
10 for identification, as of this
11 date.)

12 Q Mr. Hernandez, your attorney has
13 provided us thirteen black and white copies
14 of photographs. We marked them as Exhibits A
15 through M.

16 Were all these photographs taken
17 at the same time?

18 A Yes.

19 Q When were these pictures taken?

20 A The next day.

21 Q When the next day?

22 A I spent -- so, when I arrived to
23 Central Booking I spent the entire day there,
24 and I probably came home around 9:00 p.m.
25 that night.

1 O. Hernandez 68

2 Q So, that would be 9:00 p.m. --

3 A I'm not exactly sure on the time,
4 I just know it was nighttime.

5 Q That would have been the 1st of
6 December?

7 A I guess if there's no November
8 31st.

9 Q There isn't. Evening, nighttime
10 on the 1st you arrived home; is that correct?

11 A Yes.

12 Q So, when were the pictures taken
13 in relation to you arriving home?

14 A Maybe an hour after.

15 Q Who took the pictures?

16 A I took most of them, and I think
17 my mother took some of them, I'm not sure
18 which ones.

19 Q What did you take them with?

20 A I think either it could have been
21 -- I think it was just a point and shoot
22 Canon.

23 Q Did you take any other
24 photographs to depict any bodily injuries
25 that you claim were as a result of your

1 O. Hernandez 69

2 encounter with the police, other than the
3 thirteen that are here today?

4 A No, just my chipped tooth, but I
5 didn't take a photo of it because it would
6 always be there.

7 Q Which tooth got chipped?

8 A (Indicating).

9 Q You can't point, you have to
10 describe it in words.

11 A The left corner of my front right
12 upper.

13 Q So, other than the chipped tooth
14 and the injuries that are depicted in these
15 photographs, were there any other visible
16 injuries on your body?

17 A My mother said that my side was
18 swollen, and that's about it.

19 Q Which side?

20 A The side that I got punched on.

21 Q Which side is that?

22 A My right side.

23 Q Did you observe that?

24 A No, I was just in pain on the
25 right side for maybe two months after that

1 O. Hernandez

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2 happened. I did go to the doctor.

3 Q We'll get to that in minute.

4 Before these photographs were
5 taken, had you received any medical
6 treatment?

7 A No.

8 Q Including first aid or anything
9 like that?

10 A At Central Booking the medic
11 there changed some bandages on my forehead.

12 Q Who put the bandages there to
13 begin with?

14 A I think the ambulance that came
15 while I was in the cop car. They came and I
16 came out and they asked whatever and they
17 just bandaged whatever.

18 Q So, how long did you remain at
19 the scene in the police car before you were
20 driven to the precinct?

21 A Ten, fifteen minutes.

22 Q Who called for the ambulance?

23 A I don't know.

24 Q Did you make any complaints to
25 the ambulance attendants?

1 O. Hernandez

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2 A No.

3 Q Did they take your name?

4 A I don't recall.

5 Q What did the ambulance do for you
6 at the scene?

7 A I'm trying to recall if the
8 bandages actually got put at the scene there
9 or at the medical office thing.

10 Q What medical office thing?

11 A At the Central Booking.

12 Q Because you had said that they
13 changed bandages at Central Booking.

14 A It was a long time ago, so I
15 can't exactly recall if the bandages were
16 there already or whether they were open
17 wounds at the time. Now that I think about
18 it, I believe the bandages were initially put
19 on at Central Booking.

20 Q You're still wearing the bandages
21 when you were released from Central Booking?

22 A Yes, I took them off at home.

23 Q Did you replace them with
24 anything?

25 A I probably -- I don't remember.

1 O. Hernandez

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2 Q Did any officer say anything to
3 you while you were at the precinct until 6:00
4 a.m.?

5 A No.

6 Q Did you hear them talking about
7 you?

8 A No.

9 Q You said your girlfriend came to
10 the precinct, how do you know that?

11 A The officer did tell me that she
12 was here, and I think I told her to go home
13 or something, that there was anything she
14 could do, so for her to just go home.

15 Q Did she tell you anything she did
16 while she was at the precinct?

17 A No, not that I recall.

18 Q What were you charged with?

19 A Initially, reckless endangerment
20 -- no, reckless driving.

21 Q What was the resolution of those
22 charges?

23 A Reckless driving.

24 Q What do you mean? How did the
25 charges resolve, are they still open, have

1 O. Hernandez

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2 they been concluded?

3 A Are you asking what I was -- I'm
4 not sure.

5 MR. COHEN: Are you asking
6 what he pled guilty to?

7 Q Did you plead guilty to
8 something?

9 A Did I? I don't know. I don't
10 remember the exact terms for it.

11 Q The question I asked you was what
12 were you charged with. You were charged with
13 reckless driving, that you recall, correct?
14 Just listen to my question. You were charged
15 with reckless driving, correct?

16 A Yes.

17 Q Those charges have been taken
18 care of, they are no longer open, correct?

19 A Right.

20 Q How did those charges get taken
21 care of?

22 A I had to go to court.

23 Q What was the resolution; were the
24 charges dismissed, did you plead guilty to
25 something, did you go to trial, what

1 O. Hernandez

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2 happened?

3 A Reckless -- I got a reckless
4 driving summons and a \$200 fine.

5 Q Is that something that occurred
6 after a judge heard evidence or is that
7 something that you agreed to accept to
8 resolve the charges?

9 A I agreed to accept.

10 Q When were the charges resolved?

11 A I don't remember the court date.

12 MR. COHEN: If you want the
13 information --

14 MS. SABBATINO: You got it?

15 MR. COHEN: February 6,
16 2013. I can also tell you, just
17 to make it clear, when he got to
18 the charges that were filed, it
19 included other charges and he
20 pleaded guilty to reckless
21 driving.

22 Q Did you have an attorney who
23 represented you through the criminal case?

24 A Starting when, beginning when?

25 Q Starting from when you first were

1 O. Hernandez

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2 brought to court?

3 A I believe the initial lawyer that
4 night at Central Booking was something
5 Gardener.

6 Q Was that person assigned to you
7 or did you hire that person to represent you?

8 A I hired him.

9 Q Did you pay him?

10 A Yes.

11 Q How much did you have to pay your
12 criminal defense attorney?

13 A I don't recall, my mother paid
14 for it.

15 Q Does she expect you to pay her
16 back?

17 MR. COHEN: We're not asking
18 for money for that.

19 MS. SABBATINO: It's unclear
20 whether that's part of it or not.

21 MR. COHEN: No, we're not
22 contesting the arrest. It's
23 excessive force, that's the only
24 thing we're alleging.

25 Q While you were in Central

1 O. Hernandez

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2 Booking, did any police officers physically
3 do anything to you?

4 A Physically do anything to me?

5 Just at that one point when I went to the
6 medic.

7 Q When they dealt with your wounds?

8 A Yes.

9 Q Did any officers say anything to
10 you about the events of that evening?

11 A No.

12 Q Did you ask for anything while
13 you were in Central Booking?

14 A No.

15 Q Did anything happen to you while
16 you were there, any problems with any of the
17 other men who you were being held with?

18 A No.

19 Q After you returned home, at any
20 time, did you receive any medical treatment?

21 A No. Actually, the night, yes.

22 The night I went home, later on that night, I
23 went to the emergency room.

24 Q When did you go to the emergency
25 room?

1 O. Hernandez

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2 A That same night, I believe.

3 Q How long after being home did you
4 go to the ER?

5 A Maybe two hours.

6 Q What emergency room did you go
7 to?

8 A Einstein Hospital.

9 Q How did you get there?

10 A I took a cab.

11 Q Did you go alone?

12 A Yes.

13 Q What complaints did you make to
14 the physicians or staff at Einstein when you
15 arrived that night?

16 A That I had a lot of pain in my
17 side and my ribs.

18 Q Did you complain about anything
19 else, other than the pain in the right ribs?

20 A I had pain my forehead.

21 Q Did you complain about anything
22 else?

23 A The cuts, the gashes, and
24 especially the lump on my forehead was
25 hurting.

1 O. Hernandez

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2 Q Did they ask you how you received
3 those injuries?

4 A I don't recall if they asked me.

5 Q Did you tell them?

6 A I don't remember having a
7 conversation about that with them. Yes,
8 okay, I told them it was the police officers
9 that did do that to me and that was it.

10 Q Did they take any X-rays?

11 A Yes.

12 Q What part of your body did they
13 X-ray?

14 A They did a CT scan on my head and
15 X-ray on my side.

16 Q What were the results of the CT
17 scan for your head?

18 A If I remember the exact term,
19 severe mucosal thickening, that's what was on --

20 Q Where was the mucosal thickening
21 located?

22 A It was in my sinus.

23 Q Had you had sinus problems
24 before?

25 A No, not that I know.

1 O. Hernandez

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2 Q Did you have a primary care
3 doctor before this incident happened?

4 A No.

5 Q Had you ever had any ear, nose or
6 throat problems before?

7 A When I was a child.

8 Q What kind of ear, nose and throat
9 problems did you have as a child?

10 A I had tubes in my ear.

11 Q Did the doctors at the hospital
12 give you an opinion or tell you what they
13 thought caused the severe mucosal thickening?

14 A Not that I recall.

15 Q Did they prescribe treatment for
16 the severe mucosal thickening?

17 A No.

18 Q Did they discuss with you the
19 results of the X-rays to your ribs?

20 A No, I think it was just bruising.

21 Q Did they prescribe any treatment
22 for the bruising to your ribs?

23 A No.

24 Q Did they give you instructions to
25 return to the hospital at any time?

1 O. Hernandez

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2 A No, I think they just gave me a
3 prescription for painkillers.

4 Q Did you have it filled?

5 A I can't remember.

6 Q Did you take any medication for
7 pain at any time after this incident?

8 A I took a few painkillers.

9 Q Just a few in total?

10 A One or two.

11 Q In total?

12 A That night.

13 Q I'm talking about from then to
14 now.

15 A I don't remember.

16 Q Did you return to Einstein
17 Hospital for follow-up treatment at any time?

18 A No.

19 Q Have you received any medical
20 treatment anywhere else, other than at
21 Einstein Hospital?

22 A No.

23 Q So we're clear, the only medical
24 treatment you've received since the incident
25 occurred is going to the ER the night it

1 O. Hernandez 81

2 | happened?

3 | A Right.

4 Q Were you confined to your bed for
5 any period of time after the incident?

6 A No, but I had limited mobility
7 compared to normal.

8 Q What limitations on your mobility
9 did you have?

10 A It was hard to extend my arm up
11 because of the pain I had in my side.

12 Q Which arm?

13 A My right arm.

14 Q How long did that last for?

15 A It didn't fully go away until, I
16 would say, a month-and-a-half to two months I
17 had the pain on my side.

18 Q What other, if any, limitations
19 in mobility did you experience following this
20 incident?

21 A That's it.

22 Q Were you confined to your home
23 for any period of time after the accident?

24 A No.

25 Q Were you in school at the time

1 O. Hernandez

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2 the accident happened, had you enrolled in
3 the fall semester of last year?

4 A Yes.

5 Q Was school over with already by
6 the time the incident happened?

7 A No, I remember being in school
8 with my facial marks.

9 Q Did you miss any time from
10 school?

11 A Maybe just a day or two.

12 Q How many classes were you taking
13 in the fall semester of last year?

14 A I believe three to four.

15 Q Have you seen any of the officers
16 who were involved in this incident since that
17 time?

18 A No.

19 Q Did you contact the Internal
20 Affairs division of the police department
21 regarding this incident?

22 A No.

23 Q Did you contact the Civilian
24 Complaint Review Board?

25 A No.

1 O. Hernandez 83

2 Q Did you place any information
3 about this incident online through social
4 media?

5 A No.

6 Q Did anyone that you know of place
7 any information online through social media
8 about this incident?

9 A No.

10 Q How long did the abrasions and
11 lacerations take to heal?

12 A I don't recall, a while.

13 Q What does a while mean to you?

14 A A month, maybe more for the
15 bigger ones.

16 Q Do you have any residual scarring
17 anywhere?

18 A I had a scar. I'm not sure if
19 it's still there, but I had a small scar on
20 my eyebrow where one of the cuts were.

21 Q Did you require any stitches?

22 A No.

23 Q Did anyone suggest you needed
24 stitches?

25 A My mother, but I don't think so.

1 O. Hernandez

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2 Q Any medical personnel?

3 A No.

4 Q When was the last time you
5 noticed whether or not the scar in your
6 eyebrow is still present?

7 A I haven't looked, but I'm not
8 sure.

9 Q Other than the scar on your
10 eyebrow, do you have any other marks on your
11 body which --

12 A The chipped tooth.

13 Q Have you been to the dentist?

14 A I have, but not for that reason.

15 Q Did you ask the dentist if
16 there's anything that needed to be done
17 because of the chipped tooth?

18 A No.

19 Q Have you ever brought a case or
20 claim against the City of New York, other
21 than this one?

22 A No.

23 Q Have you ever brought a case or
24 claim against the State of New York?

25 A No.

1 O. Hernandez

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2 Q Did you incur any expenses as a
3 result of the incident?

4 MR. COHEN: As a result of
5 the police misconduct or the case
6 itself?

7 Q Did you incur any expenses as a
8 result of your contact with the police that
9 night, your arrest?

10 A Can you elaborate a little more,
11 can you give me an example?

12 Q Medical expenses, pharmacy
13 expenses, transportation expenses or anything
14 like that?

15 A No, I don't believe so.

16 Q Did you have full coverage on
17 your car?

18 A No, liability.

19 Q Were any photographs taken to
20 show the car in the position it ended up
21 after you crashed it into the concrete
22 barrier?

23 A No.

24 Q Do you know how your girlfriend
25 left the scene?

1 O. Hernandez 86

2 A No, I don't remember.

3 Q Did anyone that you knew come to
4 the scene?

5 A No.

6 MS. SABBATINO: The City
7 would request that Mr. Hernandez
8 execute for us today an
9 authorization to obtain the
10 medical records from Albert
11 Einstein College of Medicine, as
12 well as an authorization to
13 obtain records from the Criminal
14 Justice Authority with respect to
15 the prosecution of this case.

16 MR. COHEN: You have the
17 forms?

18 (Continued on next page to
19 accommodate jurat.)

20

21

22

23

24

25

1 O. Hernandez 87

2 MS. SABBATINO: We do have
3 the forms.

4 MR. COHEN: Okay.

5 MS. SABBATINO: Thank you.

6 No further questions.

7 -00-

8 (Whereupon, the examination
9 of Omar Hernandez was concluded
10 at 3:05 p.m.)

11
12 OMAR HERNANDEZ
13
14
15
16
17
18
19
20

21 Subscribed and sworn to
22 before me this _____ day
of _____, 2013.

23
24 NOTARY PUBLIC
25

C E R T I F I C A T E

I, Koel Dressman, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



KOEL DRESSMAN